



IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

—•—
No.

78-681
—•—

WILLIAM ROBERT NOLTE, Petitioner,

v.

THE BUDD COMPANY, Respondent.

—•—

SUPPLEMENTAL APPENDIX

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**MEMORANDUM OPINION AND ORDER DENYING
PLAINTIFF'S MOTION TO COMPEL DISCOVERY,
GRANTING DEFENDANT'S MOTION TO VACATE
NOTICE OF TAKING DEPOSITION, AND
GRANTING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

(United States District Court
Eastern District of Michigan
Southern Division)

(William Robert Nolte, Plaintiff v The Budd
Company, a foreign corporation, Defendant. Civil
Action No. 5-71247.)

At a session of said Court, held in the Federal
Building, in the City of Detroit, Wayne County,
Michigan, this 27th day of December, A.D. 1977;

Present: THE HONORABLE FRED W. KAESS
United States District Judge

On January 16, 1976, this Court rendered a
Memorandum Opinion and Order Granting Defendant's
Motion for Summary Judgment. Plaintiff appealed the
dismissal of the suit, and on May 24, 1977, the United
States Court of Appeals for the Sixth Circuit entered an
Order vacating the decision granting summary
judgment and rendering the matter "for reconsideration
after plaintiff has conducted reasonable discovery."
Nolte v. Budd, — F.2d — (6th Cir., 5/24/77). Thereafter,
this Court entered an Order reopening discovery.

In an attempt to comply with the Order reopening
discovery defendant filed its answers to a set of
fourteen outstanding interrogatories. Further, plaintiff

filed, and defendant properly responded to, a second set of interrogatories and request for production of documents. On August 30, 1977, after prior notice had been given, plaintiff deposed James A. Brooks, Vice President of Employee Relations for defendant herein. Discovery in this cause was ordered closed as of November 25, 1977.

The first matter presently before the Court is a motion by plaintiff to compel discovery pursuant to Rule 37, Federal Rules of Civil Procedure. Initially, the Court notes that the request of plaintiff was filed on September 21, 1977, and defendant responded on September 30, 1977, producing certain documents while resisting others on the ground that they were unreasonable and/or irrelevant or immaterial to plaintiff's cause of action. Of the ten requests for production of documents made by plaintiff, defendant has properly responded to all, either by production or by refusal to produce. Specifically, defendant has properly produced documents satisfying requests number 1, 2, 4, 5, 6, 8 and 10. With regard to requests number 3 and 7, defendant submitted the requested documents to the Court for an in-camera inspection to determine if the documents were relevant or material to plaintiff's cause of action. The Court has reviewed these documents in their entirety, and is drawn to the inescapable conclusion that nothing within these documents is either relevant, material or capable of leading to relevant or material matter. Thus, the Court concludes that defendant properly refused to produce these documents to plaintiff. Finally, request number 9 was properly resisted by defendant. In view of defendant's prior answer that plaintiff was *not* a bonus employee, the request for a list of bonus employees of the legal department, including the date and amount of

the bonus, was unreasonable and not a proper subject area capable of producing relevant and/or material information.

The Court is particularly sensitive to the fact that an employee alleging age discrimination is at an inherent disadvantage in gathering hard evidence to support his claim, and that "relevant" discovery has a very broad and far-reaching meaning allowing fishing expeditions in certain cases. However, the Court is satisfied that with regard to all plaintiff's requests, defendant has either properly responded by producing the requested information or resisted production because the information sought has no possible bearing on the subject matter of the suit.

The second matter presented to the Court for decision also involves discovery techniques. On November 16, 1977, plaintiff noticed the taking of the deposition of Gilbert F. Richards, Chairman of the Board of defendant corporation. The noticed date was November 23, 1977, as discovery was to close as of November 25, 1977. Defendant resisted the deposition of Mr. Richards on two grounds, to-wit, untimely notice and dilatory tactics in delaying the matter as the deposition of Mr. Richards would serve no useful purpose.

Vacation of a notice of discovery is generally regarded as unfavorable. However, the Court clearly has power to vacate a notice of deposition, Rules 26(c) (1), Federal Rules of Civil Procedure. In the case at bar, the Court is in agreement with both grounds raised by defendant in opposing the deposition of Mr. Richards. First, all the information made available to plaintiff regarding Mr. Richards was produced over two months prior to the closing date of discovery. Secondly, to request defendant to produce Mr. Richards on such short notice

is, within this Court's opinion, unreasonable notice within the contemplation of Rule 30. However, more importantly, plaintiff proffers no reason to the Court why the deposition of Mr. Richards is required. The Court views the noticing of the deposition as an oppressive and annoying tactic calculated to delay the matter past the closing date of discovery in an attempt to preclude the Court from reconsideration of summary judgment.

The third, and most critical, motion before the Court is defendant's motion for reconsideration of summary judgment. Viewing the affidavits and counteraffidavits submitted by the parties in the light most favorable to plaintiff, together with the depositions, answers to interrogatories and produced documents, the matter at bar is ripe for summary judgment, and the Court therefore reinstates, in full, its January 16, 1976, Opinion and Order granting same. In spite of the additional discovery that has been conducted, plaintiff has failed to show that there is any genuine issue as to a material fact regarding his claim of age discrimination.

In light of the above considerations, IT IS ORDERED that Plaintiff's Motion to Compel Discovery be, and hereby is, denied.

IT IS FURTHER ORDERED that Defendant's Motion to Vacate Notice of Taking Deposition be, and hereby is, granted.

IT IS FURTHER ORDERED that Defendant's Motion for Reconsideration of Summary Judgment be, and hereby is, granted.

/s/ Fred W. Kaess

United States District Judge